

MINUTES  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
June 25, 2012 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE** A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Larry Willis, Chairman; Tina Baxter, Don Mottley, Judy Writsel and Jeff Valiant.

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director, Sheila Lacer and Molly MacGregor, Staff.

**MEMBERS ABSENT:** Terry Dayvolt and Mike Winge.

**MINUTES:** Upon a motion made by Don Mottley and seconded by Tina Baxter, the minutes of the last regular meeting held May 29, 2012, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

**SPECIAL USE:**

**BZA-SU-12-15**

**APPLICANT:** Matches, LLC, Michael DeClue, President. **OWNERS:** Michael & Carlotta DeClue

**PREMISES:** Property located on the SW side of Walnut St. approximately 0' SE of the intersection formed by Walnut St. & 3<sup>rd</sup> St. Lt 114 in Town of Elberfeld. Greer Twp. (Complete legal on file) 270 W. Walnut St.

**NATURE OF CASE:** Applicant requests a Special Use (SU 12 – Home Occupation) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a home office for Matches, LLC, not exceeding 25% of the first floor area. Office will be used for paperwork of taxes, Federal DOT papers, Kentucky tax papers, payroll and computer work in an “R-1A” Single Family Dwelling zoning district. *Advertised in the Boonville Standard June 14, 2012.*

Mike DeClue was present.

The Chairman called for a staff report.

Mrs. Rector stated they have all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said this is for a Home Occupation (SU – 12) to

allow home office and per the square footage of the house they could have up to a 288 square foot office; they are proposing to use an 8'X12' area which is 96 square feet. She said the existing land use is a Single Family Dwelling and unattached accessory buildings and all surrounding property is zoned "R-1A" with residences. She said there is no flood plain on the property and their driveway is on Third Street. Mrs. Rector said there was a formal complaint filed March 28, 2012 by the Town of Elberfeld saying *Resident was given truck parking permit according to the current town ordinance. However, resident has since abused this privilege, running what appears to be a business out of the residence, causing great concern among neighbors and townspeople due to the number of trucks being parked, general disregard for fellow residents, his continually blocking of roadways and his inability to navigate turns without intruding into someone's yard. Resident also has an 1100 gallon fuel tank located on property (recently leaked), has been noted working on trucks late into the night, and used truck parts lying about property. Included with this complaint are copies of letters from residents and pictures.* She said Mr. DeClue appeared before the Plan Commission on May 14, 2012 where he was informed he could not operate his business at this location and could not have the trucks at this location and he was told he could file for a Special Use for a home occupation to allow him to operate his office at his residence. She added he is to reappear before the Plan Commission at their July 9<sup>th</sup> meeting to report his progress with resolving his violations. She said a copy of this application has been sent to the Town of Elberfeld for their review and comments and the application is in order.

Mr. DeClue said a lot of the statements that were made were untrue but that was gone through at the meeting last month and he knows the County has an ordinance that you can't park anything over 1.5 tons at your house and he was in violation of that and so all the other things didn't make any difference. He said he wasn't driving on anyone else's property and the tank doesn't leak; that is untrue but the part of him having his trucks there was true but they don't come there anymore, they go home with the people who drive for him. He said the only time they are there is if he has to do something to them.

Larry Willis said so what he is here for today is to use part of his residence as an office to run his business and it has nothing to do with the trucks coming to the property.

Mr. DeClue said that is correct.

Mrs. Rector asked Attorney Doll should consider a condition that he has to be found in compliance with the zoning at the Plan Commission meeting.

Attorney Doll said it seems to him they need to resolve the pending complaint at the Plan Commission. He said they could either make the approval tonight conditioned up that being successfully resolved or they can continue this application until July. He said he is sure Mr. DeClue is using his office now and that hasn't been subject to the complaint. He said it is up to this Board as to how they want to verify a resolution has been reached.

Larry Willis said he thinks that if it passes this evening it should be conditional on the fact that he appears before the Area Plan Commission and if he passes there then there is no reason why he would have to come back and spend more time.

Discussion ensued over placing a condition on the approval or continuing the application.

Mr. DeClue said he is in the process of buying some property just outside of Elberfeld where the old Subway used to be out by the interstate before they blocked it off. He said he is trying to buy that and he can give them the man's name he is working with so they can verify that.

Attorney Doll asked if he will move his office there.

Mr. DeClue said he has to have someplace right now to be in compliance and that is the only reason he is here tonight. He said if he had known a month ago about the property he wouldn't be here because he would be moving.

Attorney Doll asked when he will know whether or no he has the property purchased.

Mr. DeClue said he has to talk to the seller and the bank and it is an SDA loan so...

Attorney Doll said they should go ahead and deal with the home occupation issue and keep him where he needs to be.

Mr. DeClue said as far as they can tell it looks good; they have a couple of issues they have to deal with but other than that...

Judy Writsel asked if he expects the truck drivers to come by his house for any reason.

Mr. DeClue said trucks come in and out of Elberfeld all the time. He said the GPS system runs them through town when they are trying to get to Fibertech.

Mrs. Writsel said her question is does he expect his drivers to come to his house.

Mr. DeClue said only in an emergency. He said they don't come to the house now and there are times he goes 3-4 weeks before he even sees them.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Don Mottley made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.

4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to no identifying or business sign being erected or placed on any site for with the SU 12 has been granted by the Board of Zoning Appeals.
2. Except for the shipment and receipt of goods, products or items necessary for the SU 12, the use shall not be visible from the exterior of the premises.
3. No person or persons may be employed in the SU 12 home occupations at site other than the resident (residents) of the site for which the SU 12 has been granted.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to the successful resolution of the pending complaint before the Area Plan Commission.

The motion was seconded by Jeff Valiant and unanimously carried.

#### **VARIANCES:**

##### **BZA-V-12-16**

**APPLICANT:** Custom Sign & Engineering, by Debra Mounts, Sales Rep. **OWNER:** Newburgh Property Management, LLC, Mark Gavorski, owner.

**PREMISES:** Property located on the E side of Eli Place approximately 0' SE of the intersection formed by Stahl Rd. & Eli Place. Lot 2 Eli Place Subdivision, Ohio Twp. *3800 Eli Place*

**NATURE OF CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an on premise sign encroaching 10' into a recorded 20' building setback line in a "C-4" General Commercial zoning district. *Advertised in the Boonville Standard June 14, 2012.*

Mark Gavorski and Debra Mounts were present.

The Chairman called for a staff report.

Mrs. Rector said they mailed the notices for both this Variance and the following Variance together. She said they still need either return receipt or unopened envelope from Wade Farr, Travis Kaiser and KR Development. She said they are asking for a Variance to allow an on premise sign to encroach 10' into a 20' recorded building setback line. She said this is an existing Assisted Living & Continuous Care Facility and the property to the west is vacant C-4, lot 1 Eli Place; to the east is R-1A existing Sweats Subdivision; to the south is M-1 – Deaconess Gateway and to the north is C-4 Stahl Road Business Park. She added the property is within a 500 year flood plain and the facility has an entrance off Eli Place. Mrs. Rector said this sign is at the southern portion of the lot and will be seen from SR 66. She added that it was given a permit in April showing it to be 20' off the property line and out of the building line. She said they came before the BZA last month and obtained an SU 8 (message board) for this sign, which they will still be subject to the conditions of that application. She said they want to move the sign forward ten feet in order to be more visible to SR 66 and state on the application *Applicant requests the relaxation of the 20 foot building setback at the south property line to allow for placement of a commercial pylon sign to provide visibility from Hwy. 66 for their new assisted living facility. The only locations available for the installation of the pylon sign behind the 20 foot setback line are near the east and west property lines which are obscured from view by wooded lots to the east and west which would severely limit the visibility and functionality of the sign. Commercial developments normally required only a 5 foot building set back which would allow the sign to be positioned for effective viewing near the center area of the south property line frontage.* She said the application is in order and would be subject to the return receipts being submitted.

Larry Willis asked why there is a 20' setback on this lot instead of the required 5' for commercial development.

Mrs. Rector said the developer chose to put it on there; they were not told to do so. She said a lot of times they don't think about the signage when they plat their ground; they just want to make sure that all buildings are farther back than required and the issue of signage isn't thought about.

Mr. Gavorski said the sign will be in the parking lot if they don't get the Variance.

Attorney Doll asked why they didn't amend the plat.

Mrs. Rector said they could do that.

Attorney Doll said there are two ways to fix the problem, one of them is the Variance and the other is to correct the plat because they have the wrong setback shown.

Mrs. Rector said they can put any size setback they want.

Attorney Doll said they could have put a 5' or 10' setback on the plat and then they wouldn't need the Variance. He said it would seem to him to be a cleaner way to take care of the matter.

Mrs. Mounts said when she was getting some input on this it seemed to be the correct path...she is new to all of this and has never had to do a Variance but they open August 1<sup>st</sup> and she thinks this was the most expeditious way to solve the issue. She added she is not familiar with the re-plat issue either.

Don Mottley asked how long it would take to change the plat.

Mrs. Rector said it would take a corrected plat and say there was an error making the setback 20' and it should be either 5' or 10' setback and that only takes them submitting a new plat to the office and have it recorded. She said they would have to pay the surveyor to prepare the plat and pay to have it recorded and that would clear up the setback issue for now and anytime in the future.

Attorney Doll said what bothers him is he isn't sure they can comply with Section 4 of the ordinance because the alleged hardship cannot have been self-created by the person seeking the Variance. He said with all due respect; it is self-created, they put 20' on the plat instead of 5'. He said he isn't trying to be a stickler.

Mrs. Mounts asked if that is something they did or something the people who subdivided the property and sold it to them did.

Mrs. Rector said the developer did.

Mrs. Mounts said so they purchased it not knowing it was there.

Mrs. Rector said Eli Place put it on there; this facility. She said the plans were drawn up for them. She said she doesn't know why they chose the setback; a lot of people put larger building setbacks on their plats to keep the buildings farther from the road.

Attorney Doll said but when they do that they limit the signage because it is also a structure and subject to the setbacks.

Mrs. Rector said while they are talking about this they need to know the next Variance is for the same lot but at the other end of the lot next to Stahl Road. She said she doesn't know if they would amend the plat if there even be enough space between the sewer easement and the building line.

Mrs. Mounts said that is a 30' sewer easement and the 25' building line is inside it.

Mrs. Rector said correcting the plat won't help that one. She said the sewer easement was already in place when they did the plat.

Mrs. Mounts said they did get an encroachment agreement from Newburgh.

Mrs. Rector said she is trying to take care of this before they get to the next one.

Attorney Doll said that is really a double request; it is a setback and an easement Variance request. He said they would still need the easement Variance but they might not need the setback Variance. He asked how far off Stahl Road they plan on being.

Mrs. Mounts said the sign is 19' from the property line.

Attorney Doll said so if they had a five foot setback then all they would need is a Variance to put the sign in the easement and they have the sewer department's consent. He said so they really could fix 2/3 of the problem with a corrected plat. He said the nice thing about that is it won't be for just one spot and not just for the signage, it will be for the whole lot and any structure.

Mrs. Rector asked Mr. Gavorski if he is one of the owners.

Mr. Gavorski stated he is.

Mrs. Rector asked if he knows of any specific reason why the original owner of the property, who still owns the adjacent lot, wanted those setbacks.

Mr. Gavorski said he doesn't know.

Attorney Doll said so they weren't negotiated. He then said it seems to him they could go ahead and act on the Variances tonight; he has a problem with the fourth requirement because he thinks this is self-created, but maybe the Board doesn't. He said they could vote on it tonight but they could still bring in an amended plat with a Scrivener's error notation and fix the problem in a different way.

Larry Willis said they could bring it in at a later date and then if this is approved tonight they could move forward with their project while waiting for an amended plat.

Attorney Doll said he really recommends they think about amending the plat to fix this problem because years from now someone will be scratching their head asking why there is a 20' setback line there when all they needed was a 5' setback. He said if there is a time crunch because they are close to opening...

Mr. Gavorski said they open in 45 days.

Attorney Doll said the only hesitation he has is no one here can promise what the Area Plan Commission will...

Mrs. Rector said an amended plat won't go before the Plan Commission; it will be approved by her but...

Attorney Doll said they don't know what the developer; the land owner, negotiated with this company when they sold them that parcel.

Mrs. Rector said that is right and it is still not going to take care of the sewer easement.

Attorney Doll said they are still going to have to vote on the sewer easement.

Mr. Gavorski said they are going to negotiate on the adjacent lot as well and so eventually they are going to have to get this corrected.

Mrs. Rector said that lot has been platted too and even if they approve this tonight they ought to get the plat corrected and change those setbacks because the lot next door has the same thing.

Attorney Doll said that is free advice and they really should think about it. He said it would be in their best interest to correct the plat as a Scrivener's error. He said and in the mean while they can ask the Board to vote on the Variance request they have before them tonight.

Mr. Gavorski said they would like to do that.

Attorney Doll said it seems to him there are three votes.

Mrs. Rector said this first one is just for it to be allowed in the setback line on the south end of the property.

Mr. Gavorski said they are going to open a \$20 million property with 200 employees they are hiring and the signage is very important to them.

Ascertaining there were no other comments from the Board and being no remonstrators present, the Chairman called for a motion.

Don Mottley made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is an error in the description on the plat.



4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.
  - e) Subject to the conditions of BZA-SU-12-13

The motion was seconded by Tina Baxter and unanimously carried.

**BZA-V-12-17**

**APPLICANT:** Custom Sign & Engineering, by Debra Mounts, Sales Rep. **OWNER:** Newburgh Property Management, LLC, Mark Gavorski, owner.

**PREMISES:** Property located on the E side of Eli Place approximately 0' SE of the intersection formed by Stahl Rd. & Eli Place. Lot 2 Eli Place Subdivision, Ohio Twp. 3800 Eli Place

**NATURE OF CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an on premise sign to be located within a 30' Newburgh Sewer Easement and encroaching 6' into a recorded 25' building setback line in a "C-4" General Commercial zoning district. *Advertised in the Boonville Standard June 14, 2012.*

Debra Mounts and Mark Gavorski were present.

Mrs. Rector said the staff report is almost identical to the previous staff report. She said this is a request for a Variance for an on premise sign to be located within a 30' Newburgh Sewer Easement and encroaching 6' into a 25' recorded building setback line. She said the applicants statement said Eli Place was recorded in 2011 and Lot 2 has a 30' Newburgh Sewer Easement across the whole front of the lot. She said within that 30' easement is a 25' building line and right below the 20' sewer easement is a 6' public utility easement and just south of that utility easement is approximately 173 feet of detention easement. She said the proposed sign will sit 19 feet from the property line but will lie entirely within the 30' sewer easement and encroach 6' into the 25' building line. She added they appeared before the Newburgh Town Board and received an encroachment agreement that has been recorded and provided to us. She said the Applicant's statement says *Applicant requests the relaxation of the 25 foot building setback at the north property line at Stahl Road to allow for placement of a commercial monument sign marking the sole entrance to their commercial development on Stahl Road, contingent upon an encroachment being granted by the Newburgh Sewer Department. The only other location available for the installation of the entrance monument sign would be behind drainage and utility easements which would require that the sign be over 80 feet back from Stahl Road. As the Stahl Road entrance provides the only access to this commercial development the 80+ setback would potentially create confusion to new visitors as they attempt to locate the entrance on a stretch of road that appears residential and rural. Commercial developments normally require on a 5 foot building set back which would allow the development entrance sign to be position for effective viewing.* Mrs. Rector said the application is in order.

Don Mottley asked about the 5' setback on the side to which Mrs. Rector said they can have a five foot yard all around the property and chose to put five foot along the sides but not along the north or south. She said they don't even have to put side building lines on the plat but they did.

Discussion ensued over the location of the setbacks.

Ascertaining there were no other comments from the Board and being no remonstrators present, the Chairman called for a motion.

Tina Baxter made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the conflicting utility right of ways.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - 1) Subject to an Improvement Location being obtained.
  - 2) Subject to a Building Permit being obtained.

- 3) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- 4) Subject to all utility easement and facilities in place.
- 5) Subject to a recorded encroachment agreement with Newburgh Sewer Department

The motion was seconded by Jeff Valiant and unanimously carried.

Attorney Doll asked them to make a finding of fact that the proposed encroachment agreement dated June 13, 2012 between the Town of Newburgh but not specifically Newburgh Sewer Department meets the intent of the Variance.

Jeff Valiant made a motion the tendered encroachment agreement from the Town of Newburgh is in compliance with the Variance just passed. The motion was seconded by Don Mottley and unanimously carried.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector introduced Molly MacGregor to the Board as the new full time Planner. She said she will be coming to all of the meetings to learn the job.

Larry Willis welcomed Molly to the staff and said he is proud of the staff, they work very hard.

Being no other business the meeting adjourned at 6:50 p.m.

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Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held June 25, 2012.

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Sherri Rector, Executive Director